there is an acceptance, signed by him, written across the bill; and it is perfectly clear, that, according to mercantile usage, these circumstances point it out to be a bill of exchange. It was proved that this instrument had never been out of the hands of the parties by whom it was concocted, until it was in a perfect state. It therefore never had any existence as a promissory note; and, from what appeared at the trial, there is no injustice in saying that the words "I promise to pay" were interlined for the purpose of taking the course which has now been pursued.

CROMPTON, J.—I am of the same opinion. Those decisions should not be impeached which say that a party may treat such an equivocal instrument as this either as a bill of exchange or as a promissory note. But in my opinion this is most like a bill of exchange.—*Rule refused.*[1]

RECENT FRENCH DECISIONS.

Tribunal de Commerce de la Seine. July, 1852.

MALGAIGNE *v.* DE SAINT PRIEST.

The editor of an Encyclopedia has no right to alter the manuscript of a contributor whose article appears in his own name, in order to harmonize it with the general doctrines of the work.

The circumstances under which the question arose are detailed in the judgment of the Court.[2]

THE TRIBUNAL, after due consideration of this case, deciding as well on the claim of Malgaigne, as on the cross-demands of the defendant, adjudges as follows:

Saint Priest, editor in chief of the *Encyclopèdie du dix neuviéme siècle*, employed Malgaigne to prepare for that work the article on

[1] See Story on Promissory Notes, § 16, Gillespie v. Mather, 10 Barr, 31.

[2] In this and the next case, the opinions of the court are divested of the technical form with which a French judgment is clothed, but are otherwise substantially as they appear in the work whence they are taken. The decisions themselves, as the law of copyright in France is based upon similar principles to our own, are of great weight, if they be not actual authorities.

medicine. Malgaigne having given in his manuscript, and corrected the first proof, failed to receive afterwards any revise, and consequently did not see it through the press. The article '*Medicine*' nevertheless appeared in the Encyclopedia, under the signature of Malgaigne, but with very important changes on the part of Saint Priest. A comparison between the text as printed, and the manuscript, proves that a great deal has been struck out, and many modifications made, and that these mutilations are such as to alter essentially, the character of the views presented by the author, and the general tendencies of his essay.

Saint Priest alleges that as the editor of a collective work, he had only exercised a legitimate right in making certain suppressions and modifications in Malgaigne's article, indispensable with a view to uniformity in the principles on which the Encyclopedia was planned. He also adds that the curtailments made were requisite in order to fit the article to the limit reserved for it.

This justification of Saint Priest cannot be supported. Without stopping to consider the peculiar character of the Encyclopedia, we cannot recognize as a principle the right in the editor of any publication whatever, the right to introduce any essential alteration in the opinions of an author who subscribes his name to his contribution. Such a liberty, if granted, would lead to nothing less than to place the reputation and credit of authors at the mercy of editors. Malgaigne's manuscript, moreover, was received by the defendant without limitation or reservation, and it is very obvious that the retrenchments have been made not from want of room, but under the influence of certain ideas and principles.

From what has been said, it follows that Malgaigne has suffered an injury for which reparation is due to him. His demand, therefore, that the copies of the volume of the Encyclopedia containing the article *Medicine*, in the possession of Saint Priest, should be shown to him, and the altered article cut out, and that the stereotype plates should also be destroyed, is proper. He has moreover the right to require that the article after correction, shall be reprinted and sent in pamphlet form, at the expense of Saint Priest, to all the subscribers who have received the first article.

The reparation due to the plaintiff cannot, however, justly extend to the reproduction in the Encyclopedia of the article corrected according to the manuscript, as the doctrines held by Malgaigne are not in complete harmony with the prospectus of the publication, whose unity should be respected.

By a verbal agreement, the parties have fixed the rate of payment for the article, at 120 francs, the signature of sixteen pages, or 7 fr. 20 c. the page. The manuscript having been given in by Malgaigne, who has thus fulfilled his obligations, and the article having received an unfortunate and injurious publicity through the means of Saint Priest, the latter cannot refuse to pay the sum demanded of him, that is 195 francs for twenty-six pages printed matter.

The one hundred copies which are claimed, had been promised to Malgaigne as a mere courtesy, beyond and subsequently to the engagement verbally contracted, and such a promise from its nature, cannot establish in the plaintiff any legal right against Saint Priest.

With regard to the cross-demands of Saint Priest, who asserts that Malgaigne, by his delay in sending in his manuscript has caused him a serious loss, he has not shown that he had given Malgaigne any regular notice to fulfil the obligations which he had contracted. It follows that he is not in a position to claim satisfaction for the damages which he alleges himself to have sustained.

For these reasons the tribunal ORDERS and DECREES, that Saint Priest exhibit to Malgaigne, or to his attorney specially appointed, the copies of the Encyclopedia containing the article *Medicine* in his possession; that the altered article be cut out; that the stereotype plates be destroyed; that the article, when corrected by Malgaigne, be reprinted and sent in pamphlet form, at the cost of Saint Priest and under his supervision, to all the subscribers who have received the first article, and within three months from notice in the present judgment; that if this be not done in that period, Malgaigne be authorized to demand the list of subscribers, to have the said article reprinted and sent directly, at the cost of Saint Priest, to all the subscribers.

CONDEMNS Saint Priest in due course of law to pay to Malgaigne the sum of 195 fr.; and DECLARES that his cross-demands are unfounded.

CONDEMNS Saint Priest in costs.[1]

[1] A somewhat similar point to that involved in the foregoing case, was decided in Archbold *v.* Sweet, (5 C. & P. 219.) The plaintiff there, had sold the copyright of his well known work on criminal pleading, to the defendant, who afterwards, on Mr. Archbold's declining to do so, had a new edition prepared by another; but that was not stated on the title page, and purchasers were likely to suppose that it was by the author. The new edition contained a number of serious blunders. In an action on the case, Lord Tenterden ruled that Mr. Archbold had received an injury to his reputation for which he was entitled to damages.

Besides the remedy by action, an author in whose name a book has been published without his authority, can claim the interference of equity by injunction, (Lord Byron *v.* Johnson, 2 Meriv. 29.) This jurisdiction finds ample support in the analogous and frequent cases in which the unlawful use of trade marks and the like has been restrained. (See these cases collected, 14 Jur. p. II., 223; 2 Wood & Minot, 1; 2 Sandf. S. C. 591.) If the keeper of a hotel can prevent, as has been held, (Howard *v.* Henrigues, 3 Sandf. S. C. 728,) another from employing the name which he has adopted for his house, surely the reputation of an author cannot be without protection. Indeed the publication of a spurious work is a fraud on the public, and as such prevents a copyright therein, even as original matter, (Wright *v.* Tallis, 1 M. G. & S. 893. See Hogg *v.* Kirby, 8 Ves. 215; Pidding *v.* How, 3 Sim. 477.) Frauds of this nature have been also frequently checked in France, (Renouard, des droits d'Auteurs, tom II., pp. 128–130, cited Curtis Copyright, 299.) But the intervention of chancery would seem, from Clarke *v.* Freeman, (12 Jur. 150; 11 Beav. 112,) to be confined to cases of authors by profession; the injury in other cases, it was thought, being merely of a libelous character, and therefore to be first established at law.

The respective rights of an editor of, and contributors to an encyclopedia, or works of that character, do not appear to be very clearly settled at common law. In Barfield *v.* Nicholson, (2 Sim. & S. 1,) it was the opinion of the Vice Chancellor, that the statute of Anne vested the copyright of such works in the proprietor. To the same effect also is the statute 5 & 6 Vict. c. 45, § 18. Under this act it has been, however, held, that the articles or contributions must have been paid for, in order to vest the title in the proprietor. (Richardson *v.* Gilbert, 3 Engl. L. & E. 268.) Nor does the act apply where there has been a paid editor employed. (Brown *v.* Cooke, 11 Jur. 77.) In The Bishop of Hereford *v.* Griffin, (16 Sim. 190; 12 Jur. 255,) it appeared that in 1833, the plaintiff, then Dr. Hampden, had written for the publishers of the Encyclopedia Metropolitana, an essay on the life of Thomas Aquinas to be inserted therein, but there was no specific contract on the occasion with regard to the copyright; the essay was paid for, and inserted in the encyclope-

Tribunal de Commerce de la Seine—Audience of July 1st.

SAINT JULIEN *v.* DOUNIOL.

The editor of a periodical who has accepted, and begun the publication of a literary work, cannot suspend that publication without the consent of the author.

The facts are sufficiently stated in the judgment of the Court, which was substantially as follows:

Saint Julian had published in the *Revue Francaise* of St. Petersburg, a novel entitled *l'Intendant;* Douniol, editor of the *Correspondant,* a periodical published at Paris, got from Saint Julian permission to print his novel therein, reserving the right to make certain modifications and changes agreed upon. The manuscript

dia. V. Ch. Shadwell held, continuing an injunction, that the publishers had no right to republish the article in a separate form without the consent of the author. To an objection that the bill in the case should have expressly stated a reservation of the right, the Vice Chancellor said that "it was not necessary to negative the entire sale of the copyright; for in the absence of a contract for the whole it remains in the author." He seemed however of opinion that the reservation, in the 10 sect. of the Act of 5 & 6 Victoria, to an author, of separate publication after twenty-eight years did not apply to an encyclopedia; the result of which would be that neither party could reprint without the consent of the other.

A recent case in France, (Michaud *v.* Didot *freres.* Trib. Correct. *de la Seine,* Aug. 12th, 1852,) is of very great interest on these questions. The plaintiffs were the original editor of the *Biographie Universelle,* Michaud, and his assignees; the defendants, the publishers of a new biographical dictionary, which it was alleged was a piracy of the former. On comparison it appeared that there were only two or three articles substantially similar in the book; the authors of which in the earlier work happened to have been long dead. The *Biographie Universelle* professed to be a combination of articles by various writers; whose initials were signed to their respective productions. The court held, 1st, That the writers in the *Biographie Universelle* could transfer no greater right to the editor than they possessed themselves; and that on that right expiring by their death, these articles fell into the public domain; the principle that a joint copyright survives, being only applicable when the parts of the different authors are undistinguishable. This is material with reference to the rights of the widow and children at the expiration of the twenty-eight years, in our law. 2nd. It was ruled that there could be no copyright in the plan of a biographical dictionary. (See on this point cases cited, Curtis on Copyright, 179, 286.) The judgment was for the defendant, from which the plaintiff has appealed.